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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 **ANTHONY LEE CALLAHAN,**) **NO. EDCV 17-1247-KS**
11 **Plaintiff,**)
12 **v.**) **ORDER GRANTING, IN PART, MOTION**
13 **NANCY A. BERRYHILL, Acting**) **FOR AWARD OF ATTORNEY’S FEES**
14 **Commissioner of Social Security,**) **UNDER THE EAJA**
15 **Defendant.**)
16 _____)
17

18 On August 25, 2018, counsel for Plaintiff filed a Motion for Attorney Fees Under the
19 Equal Access to Justice Act (“EAJA”), with a supporting memorandum and exhibit
20 (collectively, the “Motion”). (Dkt. No. 22.) The Motion requests payment of attorney fees
21 under the EAJA in the amount of \$3,220.68 for 16.2 hours of attorney time. (Motion at 4.)
22

23 On September 26, 2018, the Commissioner filed an Opposition to the Motion
24 (“Opposition”). (Dkt. No. 24.) In her Opposition, the Commissioner maintains that EAJA
25 fees should be denied because the government’s position was substantially justified.
26 (Opposition at 2-3, 4-5.) In the alternative, the Commissioner contends that the award
27 should be reduced, because the number of hours for which Plaintiff’s counsel seeks
28

1 compensation is unreasonable. (*Id.* at 5-8.) On October 7, 2018, counsel for Plaintiff filed a
2 Reply and increased his fee request to \$4,174.38 to account for the 4.75 hours he spent
3 preparing the Motion and the Reply. (*See* Reply at 8-9.)
4

5 **BACKGROUND**

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7 On June 22, 2017, Plaintiff filed an action for judicial review of the denial of his
8 application for Supplemental Security Income in this Court. (Dkt. No. 1.) On May 29, 2018,
9 the Court entered judgment for Plaintiff and remanded the case to the Commissioner for
10 further proceedings. (Dkt. Nos. 20, 21.)
11

12 **DISCUSSION**

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14 **I. Legal Standard**

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16 The EAJA provides that a court may award reasonable attorney’s fees and expenses to
17 the prevailing party “unless the court finds that the position of the United States was
18 substantially justified or that special circumstances make an award unjust.” 28 U.S.C. §
19 2412(d)(1)(A).¹ Thus, to award attorney’s fees under the EAJA, a district court must
20 determine that: (1) “the claimant [was] a ‘prevailing party’”; (2) the government has not met
21 its burden of showing that its position was “‘substantially justified’”; and (3) “no ‘special
22 circumstances make an award unjust.’” *Comm’r, INS v. Jean*, 496 U.S. 154, 158 (1990).
23

24 ¹ In full, Section 2412(d)(1)(A) provides:

25 Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than
26 the United States fees and other expenses, in addition to any costs awarded pursuant to subsection (a),
27 incurred by that party in any civil action (other than cases sounding in tort), including proceedings for
28 judicial review of agency action, brought by or against the United States in any court having jurisdiction
of that action, unless the court finds that the position of the United States was substantially justified or
that special circumstances make an award unjust.

28 28 U.S.C. § 2412(d)(1)(A).

1 Once eligibility for a fee award under the EAJA has been established, the district
2 court is tasked with determining whether the requested fee award is reasonable. *Costa v.*
3 *Comm’r of SSA*, 690 F.3d 1132, 1135 (9th Cir. 2012) (citing, *inter alia*, *Jean*, 496 U.S. at
4 161). To determine whether a fee award under the EAJA is reasonable, the court applies the
5 same principles as those set forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), a case in
6 which the Supreme Court considered whether attorney’s fees awarded under 42 U.S.C. §
7 1988 should be reduced when plaintiff had only limited success. *Costa*, 690 F.3d at 1135.
8 In *Hensley*, the Supreme Court stated that “[t]he most useful starting point for determining
9 the amount of a reasonable fee is the number of hours reasonably expended on the litigation
10 multiplied by a reasonable hourly rate” – to wit, the lodestar method. 461 U.S. at 433. The
11 Supreme Court explained that the district court “should exclude from this initial fee
12 calculation hours that were not ‘reasonably expended.’” *Id.* at 434 (citation omitted).
13 Further, “[c]ounsel for the prevailing party should make a good-faith effort to exclude from a
14 fee request hours that are excessive, redundant, or otherwise unnecessary.” *Id.*

15
16 **II. Plaintiff Is A Prevailing Party, And No Special Circumstances Make An Award**
17 **Unjust**

18
19 In this case, the parties do not dispute that Plaintiff is a prevailing party. *See Flores v.*
20 *Shalala*, 49 F.3d 562, 568 (9th Cir. 1995) (noting that “an applicant for benefits becomes the
21 prevailing party upon procuring a sentence-four remand for further administrative
22 proceedings, regardless of whether he later succeeds in obtaining the requested benefits”).
23 Further, the Commissioner does not contend, and the Court does not find, any special
24 circumstances to make an award unjust. Therefore, Plaintiff’s EAJA eligibility hinges on
25 whether the Commissioner’s position was “substantially justified.”

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III. The Commissioner Has Failed To Show That Her Position Was Substantially Justified

The Commissioner, in opposing an award of EAJA fees, bears the burden of proving that her position was substantially justified. *Tobeler v. Colvin*, 749 F.3d 830, 832 (9th Cir. 2014) (citing *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013)). A position is “substantially justified” if it is “‘justified in substance or in the main’ – that is, justified to a degree that could satisfy a reasonable person.” *Pierce v. Underwood*, 487 U.S. 552, 565 (1998). In other words, a position is “substantially justified” if it has a “reasonable basis both in law and fact.” *Id.* “The government’s position must be substantially justified at each stage of the proceedings.” *Shafer v. Astrue*, 518 F.3d 1067, 1071 (9th Cir. 2008). The government’s position includes both the government’s litigation position and the underlying agency action giving rise to the civil actions. *See, e.g., Hardisty v. Astrue*, 592 F.3d 1072, 1077 (9th Cir. 2010); *Al-Harbi v. INS*, 284 F.3d 1080, 1084 (9th Cir. 2002); *Kali v. Bowen*, 854 F.2d 329, 332 (9th Cir. 1988). The EAJA provides that “‘position of the United States’ means, in addition to the position taken by the United States in the civil action, *the action or failure to act by the agency upon which the civil action is based.*” 28 U.S.C. § 2412(d)(2)(D) (emphasis added); *see Meier*, 727 F.3d at 872 (“W[e] first consider the underlying agency action We then consider the government’s litigation position.”).

The fact that Plaintiff was a “prevailing party” does not inherently resolve the question of whether the Commissioner’s position was substantially justified. *See United States v. Marolf*, 277 F.3d 1156, 1162 (9th Cir. 2002) (noting that “the government’s failure to prevail does not raise a presumption that its position was not substantially justified” (citing *Kali*, 854 F.2d at 334)). Indeed, “a position can be [substantially] justified even though it is not correct” *Pierce*, 487 U.S. at 566 n.2. However, “it will be only a ‘decidedly unusual case in which there is substantial justification under the EAJA even though the agency’s decision was reversed as lacking in reasonable, substantial and probative evidence

1 in the record.”” *Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005) (citation
2 omitted).

3
4 In the instant case, the Court reversed and remanded the Commissioner’s decision for
5 further administrative proceedings because the ALJ failed to provide specific and legitimate
6 reasons supported by substantial evidence in the record for discounting the opinion of the
7 treating psychiatrist. (*See* Dkt. No. 20.) While Plaintiff also raised issues concerning the
8 weight given to a state agency psychologist’s opinion and the credibility evaluation of
9 Plaintiff’s subjective symptom testimony, the Court affirmed the ALJ’s decision on these
10 issues. (*See id.*)

11
12 **A. Commissioner Was Not Substantially Justified In Discounting The Opinion Of**
13 **The Treating Psychiatrist**

14
15 The ALJ’s decision to discount the opinion of the treating psychiatrist, Dr. Jackson,
16 was not substantially justified. The ALJ was required to supply specific and legitimate
17 reasons supported by substantial evidence for discounting Dr. Jackson’s opinion. *See*
18 *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014). The ALJ discounted Dr. Jackson’s
19 opinion because: (1) “[t]he limitations assessed by Dr. Jackson appear to be based quite
20 heavily on the claimant’s subjective complaints, and are not supported by the objective
21 evidence;” (2) “[t]he claimant has not undergone psychological counseling or required
22 psychiatric hospitalization;” (3) “[a]lthough mental status examination findings suggest the
23 claimant has some limitations from his severe mental impairments, the record does not
24 support the extreme limitations opined by Dr. Jackson;” and (4) “Dr. Jackson’s conclusion
25 that the claimant is unable to work has no probative value.” (Administrative Record “AR”
26 19.)

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1 The Court determined that the ALJ's reasons were not specific and legitimate reasons
2 supported by substantial evidence. (*See* Dkt. No. 20.) First, the record indicated Dr. Jackson
3 relied on observations from interviews and evaluations, Plaintiff's history and medical file,
4 and progress and office notes. Second, the record showed Plaintiff received prescriptions for
5 several psychiatric medications, which contradicts the suggestion that Plaintiff only received
6 conservative treatment. Third, the ALJ did not explain in sufficient detail how the record
7 failed to support Dr. Jackson's opinion. Finally, the ALJ did not provide a specific or
8 legitimate reason to reject Dr. Jackson's opinion as a treating psychiatrist on Plaintiff's
9 disability other than to say it was not binding.

10
11 The Commissioner contends that the ALJ was substantially justified in discounting
12 Dr. Jackson's opinion because her reasons "had a reasonable basis in law and fact."
13 (Opposition at 4.) Specifically, the Commissioner contends that, in addition to the reasons
14 mentioned above, the ALJ discussed the medical opinion evidence of examining and non-
15 examining physicians that contradicted Dr. Jackson's opinion, the records that showed
16 Plaintiff improved with medication, and Plaintiff's daily activities. However, the ALJ only
17 gave little weight to the examining psychiatrist and partial weight to the State agency
18 psychological consultants and failed to provide specific and legitimate reasons why these
19 opinions should be given more weight than Plaintiff's treating psychiatrist. Additionally, the
20 ALJ did not rely on these reasons when outlining why she discounted Dr. Jackson's opinion.
21 (*See* AR 19.) Accordingly, for these reasons and the reasons provided in the Court's
22 memorandum opinion and order reversing and remanding this case, the Commissioner has
23 failed to establish that the ALJ was substantially justified in discounting Dr. Jackson's
24 opinion.

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1 **IV. Plaintiff Is Entitled To Recover Reasonable Attorney's Fees**

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3 Because the Commissioner's underlying position was not substantially justified,
4 Plaintiff is entitled to recover reasonable attorney's fees. In compliance with 28 U.S.C. §
5 2412(d)(1)(B), Plaintiff's attorney has provided an itemized statement of fees that he seeks to
6 recover and the hourly rates at which the fees were computed. (*See* Motion, Ex. 1.) The
7 Commissioner challenges the reasonableness of the number of hours for which Plaintiff's
8 counsel seeks to recoup attorney's fees. Specifically, Plaintiff's counsel requests \$4,174.38
9 for a total of 20.9166 hours spent on Plaintiff's case. (*See* Motion, Exhibit 1; Reply at 8.)
10 The Commissioner contends that the number of hours should be reduced "for time that is
11 redundant, unnecessary, administrative or clerical, and otherwise excessive." (*See*
12 Opposition at 5-8.)
13

14 This court has the discretion to evaluate the reasonableness of the number of hours
15 claimed by a prevailing party. *Sorenson v. Mink*, 239 F.3d 1140, 1145 (9th Cir. 2001); *Gates*
16 *v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992). In determining reasonableness, the
17 court must consider, among other factors, the complexity of the case or the novelty of the
18 issues, the skill required to perform the service adequately, the customary time expended in
19 similar cases, as well as the attorney's expertise and experience. *Kerr v. Screen Extras*
20 *Guild, Inc.*, 526 F.2d 67, 69-70 (9th Cir. 1975); *Widrig v. Apfel*, 140 F.3d 1207, 1209 (9th
21 Cir. 1998). Although the amount of time required to litigate any case can be highly variable,
22 the courts generally approve time expenditures of between 30 and 40 hours in social security
23 disability cases. *See Patterson v. Apfel*, 99 F. Supp. 2d 1212, 1214 n.2 (C.D. Cal. 2000)
24 (surveying the number of hours that the Ninth Circuit and other federal courts have deemed
25 reasonable for the litigation of a social security case); *see also Terry v. Bowen*, 711 F. Supp.
26 526, 527 (D. Ariz. 1989) (stating that the average number of hours asserted in a fee petition
27 is 37.3).
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1 The Commissioner's first contention is that counsel's itemized statement includes
2 "clerical tasks" which are non-compensable. (Opposition at 6.) Specifically, the
3 Commissioner takes issue with approximately 1.8 hours billed in 2017 and 2.75 hours billed
4 in 2018 totaling \$1,099.57² in fees. (See Opposition at 6-7.) The tasks at issue include:

5
6 May 26, 2017 – 1.25 hours to "prepare Complaint and related documents,
7 including request to proceed IFP with supporting Declaration, new civil file
8 set-up"

9 July 2, 2017 - 0.25 hours to "review Magistrate's Order re: Procedures in
10 Social Security Appeal, prepare briefing time-line"

11 July 25, 2017 – 0.1 hours to "review Proof of Service of Complaint and
12 Magistrate's Order for filing"

13 August 2, 2017 – 0.1 hours to "review Consent to Proceed for filing"

14 November 14, 2017 – 0.1 hours to "review Defendant's Answer to Complaint,
15 note to file"

16 January 15, 2018 – 1.5 hours to "review draft of Joint Submission, check cites
17 to record, dictate modifications, review final draft to send to ARC"

18 February 23, 2018 – 2.25 hours to "review Jt Submission with Defendant's
19 contentions, look up Defendant's cites to record, send e-mail to ARC with
20 consent to file, will not do Reply"

21
22 (See Motion, Ex. 1; Opposition at 6-7.) Plaintiff's counsel states he does not have
23 assistants or paralegals and argues he did not include time for "preparing a service of
24 process," "filing a Complaint," or "receiving these documents and other records," but rather
25 for preparing documents like the Complaint, reviewing documents to be filed for correctness,
26 and reviewing court orders. (Reply at 5-6.)

27
28 ² This amount appears to reflect reductions by the Commissioner where hours were approximated, but the methodology used is unclear to the Court. The Court's calculations are based on the hours listed by Plaintiff in Exhibit 1 of the Motion.

1 Courts should reduce fees requested for clerical work. *See Nadarajah v. Holder*, 569
2 F.3d 906, 921 (9th Cir. 2009). The Court agrees with Plaintiff's counsel that preparing legal
3 documents, reviewing legal documents, and reviewing court orders do not qualify as clerical
4 tasks. However, Plaintiff's counsel's entry on May 26, 2017 includes "new civil file set-up"
5 which appears to be clerical and is therefore non-compensable. Accordingly, the Court
6 deducts 0.2 hours from that entry. *See Nadarajah*, 569 F.3d at 921.

7
8 The Commissioner's second contention is that Plaintiff's counsel is experienced in
9 Social Security cases and the issues in this case are "standard" and "commonly litigated," so
10 preparation of the joint stipulation should only have taken 4 hours, not 7.25 hours.
11 (Opposition at 7.) Plaintiff's counsel argues there is no set amount of time an attorney is
12 required to spend on a case or issue. (Reply at 4-5.) Plaintiff's counsel represented Plaintiff
13 at the administrative level. (*See* AR 28.) Plaintiff's counsel raised two issues in the Joint
14 Stipulation and did not complete a reply to Defendant's portion of the Joint Stipulation. (*See*
15 Dkt. No. 19 ("Joint Stip."))

16
17 The Court finds that 7.25 hours is not unreasonable given the length of the Joint
18 Stipulation (31 pages) and the number of issues. *See Dalke v. Colvin*, No. CV 13-4457 GHK
19 (JCG), 2014 WL 4384670, at *1 (C.D. Cal. Sep. 4, 2014) (finding that 25.5 hours on the
20 plaintiff's portion of a joint stipulation in a three issue social security case with a 43 page
21 joint stipulation was unreasonable but 17 hours was not); *Tena v. Astrue*, No. CV 10-7514-
22 JFW (SP), 2012 WL 1958894, at *5 (C.D. Cal. May 25, 2012) (finding that 20.7 hours
23 between two attorneys is a reasonable time for preparing a plaintiff's portion of a joint
24 stipulation in a five issue social security case); *Wilson v. Astrue*, No. CV 10-03217-JEM,
25 2011 WL 4964813, at *3 (C.D. Cal. Oct. 19, 2011) (finding that 14.5 hours on the plaintiff's
26 *initial* portion of a joint stipulation in a five issue social security case with a 48 page joint
27 stipulation is reasonable even though most of plaintiff's arguments had already been
28 developed in an earlier settlement proposal); *Calderon v. Astrue*, No. CV 07-7312-MLG,

1 2009 WL 137024, at *2 (C.D. Cal. Jan. 16, 2009) (finding that 71 hours on the plaintiff's
2 portion of a joint stipulation in a five issue social security case with a 70 page joint
3 stipulation was unreasonable but 20 hours was not); *Santos v. Astrue*, No. CV 07-178-PLA,
4 2008 WL 2571855, at *3 (C.D. Cal. Jun. 26, 2008) (stating that "more than nineteen hours to
5 prepare a settlement proposal and a joint stipulation is an unreasonably high number of
6 hours" in a single issue social security case with a 15 page joint stipulation).

7
8 The Commissioner's third contention is that Plaintiff's counsel only secured a remand
9 on one of the issues raised and any fee award should be reduced by time spent on issues that
10 were not remanded because they were "excessive or otherwise unnecessary." (Opposition at
11 7.) Plaintiff's counsel counters that raising two issues is not "representation overkill" and
12 he was successful on behalf of his client because the case was remanded. (Reply at 6-7.)

13
14 The Court should consider "the relationship between the amount of the fee awarded
15 and the results obtained" when awarding fees. *Cummings v. Connell*, 402 F.3d 936, 947 (9th
16 Cir. 2005) (citing *Hensley*, 461 U.S. at 437). While only one of the issues raised warranted
17 remand, the case was remanded, which was a successful result for Plaintiff. The Court is
18 unpersuaded that Plaintiff's counsel raising two issues was "excessive or otherwise
19 unnecessary" such that counsel should not receive fees for his representation of Plaintiff on
20 the second issue. Plaintiff's counsel also elected to not spend time writing a reply to
21 Defendant's portion of the Joint Stipulation and yet still secured a remand. This suggests
22 Plaintiff's counsel was not engaging in "excessive or otherwise unnecessary" work that
23 would serve to increase his billable hours. Plaintiff billed 16.17 hours for litigating this case
24 in federal court and added 4.75 hours for preparing the Motion and Reply for EAJA fees for
25 a total of 20.92 hours. As previously mentioned, 30 to 40 hours is not usually considered
26 unreasonable in social security disability cases. *See Patterson v. Apfel*, 99 F. Supp. 2d 1212,
27 1214 n.2 (C.D. Cal. 2000). Therefore, the Court finds the fees requested are not
28

1 unreasonable and are related to the results obtained excepting the reduction of 0.2 hours for a
2 clerical task.

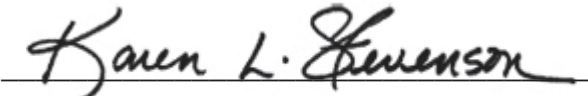
3
4 The Commissioner's final contention is that any fee awarded should be awarded to
5 Plaintiff, not Plaintiff's counsel. (Opposition at 8.) Plaintiff's counsel does not dispute this.
6 (Reply at 7.)

7
8 For these reasons, the Court finds that Plaintiff's counsel billed 20.72 compensable
9 hours (16.17 hours + 4.75 hours – 0.2 hours = 20.72 hours). These 20.72 compensable hours
10 include 6.13333 hours in 2017 and 14.58333 hours in 2018. The billing rate for these hours
11 changed from 2017 to 2018 such that the rate was \$196.79/hour in 2017 and \$200.78 in
12 2018.³ (See Motion at 3-4.) Fees are therefore allowed in the amount of \$4,135.02
13 (\$1,206.98 + \$2,928.04 = \$4,135.02).

14
15 **CONCLUSION**

16
17 For the reasons set forth above, the Motion is GRANTED, in part. Fees are allowed
18 in the amount of \$4,135.02. Pursuant to *Astrue v. Ratliff*, 560 U.S. 586 (2010), the fee
19 awarded herein shall be made payable to Plaintiff.

20
21 DATE: October 31, 2018

22
23 
24 KAREN L. STEVENSON
25 UNITED STATES MAGISTRATE JUDGE
26
27

28 ³ The Commissioner does not dispute these hourly rates.